MONTANA LEGISLATIVE HISTORY

Chapter 110 ~~19~~ 2003

Bill H _____ S 40 Original bill & history X C

H. Committee on BUSINESS & LABOR

Hearing Date(s) 3/10 & EXEC ACTION X C

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Date Out _____ C

S. Committee on BUSINESS & LABOR

Hearing Date(s) 1/15 & EXEC ACTION X C

_____ C

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Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

Bill Draft Number: LC0158
Bill Type - Number: SB 40
Short Title: Coordinate licensing for gambling and liquor
Primary Sponsor: Dale Mahlum

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 40

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	03/24/2003			
(S) Signed by Governor	03/24/2003			
(S) Transmitted to Governor	03/17/2003			
(H) Signed by Speaker	03/17/2003			
(S) Signed by President	03/15/2003			
(S) Returned from Enrolling	03/14/2003			
(C) Sent to Printing	03/13/2003			
(S) Sent to Enrolling	03/12/2003			
(H) Returned to Senate	03/11/2003			
(H) 3rd Reading Concurred	03/11/2003	88	9	
(H) Scheduled for 3rd Reading	03/11/2003			
(H) 2nd Reading Concurred	03/10/2003	98	2	
(H) Scheduled for 2nd Reading	03/10/2003			
(H) Committee Report--Bill Concurred	03/06/2003			(H) Business and Labor
(H) Committee Executive Action--Bill Concurred	03/06/2003	18	0	(H) Business and Labor
(H) Hearing	03/06/2003			(H) Business and Labor
(H) Referred to Committee	02/20/2003			(H) Business and Labor
(H) First Reading	02/20/2003			
(S) Transmitted to House	01/17/2003			
(S) 3rd Reading Passed	01/17/2003	49	1	
(S) Scheduled for 3rd Reading	01/17/2003			
(S) 2nd Reading Passed on Voice Vote	01/16/2003	50	0	
(S) Scheduled for 2nd Reading	01/16/2003			
(S) Committee Report--Bill Passed	01/15/2003			(S) Business and Labor
(S) Committee Executive Action--Bill Passed	01/15/2003	10	0	(S) Business and Labor
(S) Hearing	01/15/2003			(S) Business and Labor
(S) First Reading	01/06/2003			
(S) Referred to Committee	12/09/2002			(S) Business and Labor
(C) Introduced Bill Text Available Electronically	12/05/2002			
(S) Introduced	12/05/2002			
(C) Pre-Introduction Letter Sent	11/25/2002			

(C) Draft in Assembly/Executive Director Review	11/25/2002
(C) Draft in Final Drafter Review	11/15/2002
(C) Draft in Input/Proofing	11/15/2002
(C) Bill Draft Text Available Electronically	11/15/2002
(C) Draft to Drafter - Edit Review [CAJ]	11/14/2002
(C) Draft in Edit	11/14/2002
(C) Draft in Legal Review	11/13/2002
(C) Draft to Requester for Review	10/23/2002
(C) Draft Request Received	06/03/2002

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Law and Justice Interim Committee	
Drafter	MacMaster	John
By Request Of	Department of Revenue	
By Request Of	Department of Justice	
Primary Sponsor	Mahlum	Dale

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Gambling		Simple	GAMB
Alcohol and Drugs		Simple	ALC

Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: Y
Session Law Ch. Number: 110
DEADLINE
Category: General Bills
Transmittal Date: 02/28/2003
Return (with 2nd house amendments) Date: 04/05/2003

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	24-MAR-03	

SENATE BILL NO. 40

INTRODUCED BY D. MAHLUM

BY REQUEST OF THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR COORDINATION OF THE FILING, PROCESSING, AND GRANTING OF ALCOHOLIC BEVERAGE AND GAMBLING LICENSES APPLICATIONS; ALLOWING THE DEPARTMENT OF REVENUE TO CONTRACT WITH THE DEPARTMENT OF JUSTICE FOR THE RECEIPT AND PROCESSING OF ALCOHOLIC BEVERAGE LICENSE APPLICATIONS; REVISING ALCOHOLIC BEVERAGE INVESTIGATIVE PROCEDURES; REQUIRING ALCOHOLIC BEVERAGE AND GAMBLING LICENSE APPLICANTS TO SUBMIT FINGERPRINTS FOR PURPOSES OF A BACKGROUND INVESTIGATION; PROVIDING ADDITIONAL GROUNDS FOR TOLLING THE TIME PERIOD WITHIN WHICH AN ALCOHOLIC BEVERAGE LICENSE APPLICATION DETERMINATION MUST BE MADE; AMENDING SECTIONS 16-1-106, 16-1-302, 16-1-304, 16-4-207, 16-4-402, 16-4-406, 16-4-420, 23-5-119, AND 23-5-177, MCA; REPEALING SECTION 16-4-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Fingerprints required of applicants.** An applicant for a license under this code, any person employed by the applicant as a manager, and, if the applicant is a corporation, each person holding 10% or more of the outstanding stock and each officer and director shall submit their fingerprints with the application to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation. The results of the investigation must be used by the department in determining the applicant's eligibility for a license.

Section 2. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises

consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

(10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(11) "Immediate family" means a spouse, dependent children, or dependent parents.

(12) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(13) "Liquor" means an alcoholic beverage except beer and table wine.

(14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(15) "Package" means a container or receptacle used for holding an alcoholic beverage.

(16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as

fixed and determined by the department and in addition an excise and license tax as provided in this code.

(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(18) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(21) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

(22) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(23) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(24) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

(25) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(26) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(27) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in

accordance with federal regulations are also wine."

Section 3. Section 16-1-302, MCA, is amended to read:

"16-1-302. Functions, powers, and duties of department. The department has the following functions, duties, and powers:

(1) to buy, import, have in its possession for sale, and sell liquors;

(2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

(3) to determine the municipalities where agency liquor stores are to be established throughout the state and the situation of the stores within these municipalities;

(4) to lease, furnish, and equip any building or land required to administer its duties under this code;

(5) to buy or lease plants and equipment necessary to administer its duties under this code;

(6) to employ the necessary employees required to administer this code and to dismiss them, assign them their title, and define their respective duties and powers and to contract with the department of justice for investigative services and to receive and process, but not grant or deny, applications or to contract for the services of experts and persons engaged in the practice of a profession, if appropriate~~;~~. If the department contracts for the receipt and processing of an application by the department of justice, the application must state that it is to be filed with the department of justice.

(7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

(8) to grant and issue licenses under this code;

(9) to place special restrictions on the use of a particular license, which must be endorsed upon the face of the license, if the special restrictions are made pursuant to a hearing held in connection with the issuance of the license or if the special restrictions are agreed to by the licensee;

(10) without limiting or being limited by the foregoing, to do all things necessary to administer this code or rules."

Section 4. Section 16-1-304, MCA, is amended to read:

"16-1-304. Prohibited acts. (1) An employee of the department involved in the operation of the state liquor warehouse, the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with license applications or the investigation of matters concerning the

manufacture, sale, and distribution of alcoholic beverages may not be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of a syndicate, shareholder, agent, or employee for the employee's own benefit or in a fiduciary capacity for some other person.

(2) An employee of the state, a state agent, or any person having any ownership interest in an agency liquor store may not solicit or receive, directly or indirectly, any commission, remuneration, gift, or other thing tangible or intangible of value from any person or corporation selling or offering liquor for sale to the state pursuant to this code.

(3) A person selling or offering for sale to or purchasing liquor from the state may not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any employee of the state, any state agent, or any person having any ownership interest in an agency liquor store or to anyone on behalf of an employee.

(4) The prohibition contained in subsection (3) does not prohibit the state from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any liquor to the state of Montana shall submit, without cost to the state prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of the merchandise to the state.

(b) When a brand of liquor has been accepted for testing by the state, the state shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The state shall maintain written records of all samples received. The records must show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the state's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) Liquor may not be withdrawn from the regular warehouse inventory or from the agency liquor stores for any purpose other than sale to persons who hold liquor licenses at the posted price and sale to the consumer at the retail price established by the agent or for destroying damaged or defective merchandise. The state shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse merchandise.

(6) The state may not require a company that manufactured, distilled, rectified, bottled, or processed and sold less than 200,000 proof gallons of liquor nationwide in the previous calendar year to maintain minimum

amounts of liquor in the state warehouse while the distiller retains ownership of the product."

Section 5. Section 16-4-207, MCA, is amended to read:

"16-4-207. Notice of application -- investigation -- publication -- protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of a retail license, the department shall review the application for completeness and, based upon review of the application and any other information supplied to the department, determine whether the applicant or the premises to be licensed meets criteria provided by law. The department may make one request for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the application information requested by the department. ~~If the applicant does not provide the additional application information within 30 days of the department's request, the department shall terminate the application and return it to the applicant with an explanation of why the application was terminated. The terminated application is not a denial, and the premises identified in the application are not subject to the provisions of 16-4-413. An applicant whose application is terminated may subsequently submit a new application.~~ When the application is complete, the department ~~shall request that the department~~ of justice shall investigate the application as provided in 16-4-402. When the department determines that an application for a license under this code is complete, the department shall publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail on-premises license or a transfer of location and that protests may be made against the approval of the application by a person who has extended credit to the transferor or by residents of the county from which the application comes or adjoining Montana counties. Protests may be mailed to a named administrator in the department ~~of revenue~~ within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL

ALL-BEVERAGES LICENSE

Notice is given that on the .... day of ...., 20..., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of .....

counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to ...., department of revenue, Helena, Montana, on or before the .... day of ...., 20...

Dated .....

Signed

.....

ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) (a) If the administrator receives no written protests, the department may approve the application without holding a public hearing.

(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).

(c) If the department receives sufficient written protests that satisfy the requirements in subsection (1) against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(b) If the department receives the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(c) The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages licenses determined for that quota area according to 16-4-201(1), (2), and (5) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption beer or all-beverages licenses."

Section 6. Section 16-4-402, MCA, is amended to read:

"16-4-402. Application -- investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department ~~shall request that the department~~ of justice shall make a thorough investigation of all matters relating to the application. Based on the results of the investigation or on other information, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

(c) For an original license application and an application for transfer of location of a license, the department of justice's investigation and the department's determination under this subsection (2) must be completed within 90 days of the ~~request from the department to the department of justice~~ receipt of a completed application. If information is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. The time period is also tolled if the applicant requests and is granted a delay in the license determination or if the license is for premises that are to be altered, as provided in 16-3-311, or newly constructed. The basis for the tolling of the deadline must be documented.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(4) The department shall issue a conditional approval letter upon the last occurrence of either:

(a) completion of the investigation and determination provided for in subsection (2) if the department has not received information that would cause the department to deny the application; or

(b) a final agency decision that either denies or dismisses a protest against the approval of an application pursuant to 16-4-207.

(5) The conditional approval letter must state the reasons upon which the future denial of the application may be based. The reasons for denial of the application after the issuance of the conditional approval letter are as follows:

(a) there is false or erroneous information in the application;

(b) the premises are not approved by local building, health, or fire officials;

(c) there are physical changes to the premises that if known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or denial of the issuance of the conditional approval; or

(d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the department's final agency decision provided for in subsection (4)."

Section 7. Section 16-4-406, MCA, is amended to read:

"16-4-406. Renewal -- suspension or revocation -- penalty. (1) The department ~~may upon its own motion and~~ shall upon a written, verified complaint of a person request that the department of justice investigate the action and operation of a brewer, winery, wholesaler, or retailer licensed under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after reviewing admissions of the licensee or receiving the results of the department of justice's or a local law enforcement agency's investigation, has reasonable cause to believe that a licensee has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

(a) reprimand a licensee;

(b) proceed to revoke the license of the licensee;

(c) suspend the license for a period of not more than 3 months;

(d) refuse to grant a renewal of the license after its expiration; or

(e) impose a civil penalty not to exceed $1,500.

~~(3) If the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act.~~"

Section 8. Section 16-4-420, MCA, is amended to read:

"16-4-420. Restaurant beer and wine license. (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) in the case of an individual applicant:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors must meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock

exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange must meet the requirements of subsection (1)(b)(ii);

(d) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) A restaurant that sells its existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(3) ~~(a)~~ A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall ~~request that the department of justice make an investigation of all~~ investigate the items relating to the application as described in subsections (3)(a)~~(i)~~ through (3)~~(a)(iv)~~(d). Based on the results of the investigation ~~or in exercising~~ and the exercise of its sound discretion, the department shall determine whether:

~~(i)~~(a) the applicant is qualified to receive a license;

~~(ii)~~(b) the applicant's premises are suitable for the carrying on of the business;

~~(iii)~~(c) the requirements of this code and the rules promulgated by the department are ~~met and~~ complied with; and

~~(iv)~~(d) the seating capacity ~~as~~ stated on the application is correct.

~~(b) The department may retain 20% of the application fee collected under subsection (11) to defray the costs of the department and department of justice associated with investigating and processing applications.~~

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner meal.

(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property

upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 50% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(iv) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license for that quota area.

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a

restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants from previous selections must also be given a preference. An applicant with both preferences must be awarded a license before any applicant with only one preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies ~~issuing a license to an applicant~~ an application, the application fee, plus any interest, less a ~~$100~~ processing fee established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or less;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is $400.

(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the

licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license."

Section 9. Section 23-5-119, MCA, is amended to read:

"23-5-119. Appropriate alcoholic beverage license for certain gambling activities. (1) Except as provided in subsection (3), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant shall own in the applicant's name:

(a) a retail all-beverages license issued under 16-4-201;

(b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises;

(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6;

(d) a retail beer and wine license issued under 16-4-109;

(e) a retail all-beverages license issued under 16-4-202; or

(f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

(4) A license transferee or a qualified purchaser operating pending final approval under 16-4-404(6) who

has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title 23, chapter 5, part 3, 5, or 6."

Section 10. Section 23-5-177, MCA, is amended to read:

"23-5-177. Operator of gambling establishment -- license -- fee. (1) It is a misdemeanor for a person who is not licensed by the department as an operator to make available to the public for play a gambling device or gambling enterprise for which a permit must be obtained from the department.

(2) To obtain an operator's license, a person shall submit to the department:

(a) a completed operator's license application on a form prescribed and furnished by the department;

(b) the person's fingerprints and, if the applicant is a corporation, the fingerprints of each person holding 10% or more of the outstanding stock of the corporation and of each officer and director of the corporation, to be used for a fingerprint and background check that must be used by the department in determining eligibility for a license;

~~(b)~~(c) any other relevant information requested by the department; and

~~(c)~~(d) a license application processing fee, as required in subsection (8).

(3) Before issuing an operator's license, the department shall approve, in accordance with 23-5-117, the premises in which the gambling activity is to be conducted.

(4) Except as provided in 23-5-117, regardless of the number of on-premises alcoholic beverage licenses issued for a premises, the department may issue only one operator's license for the premises.

(5) An operator's license must include the following information:

(a) a description of the premises upon which the gambling will take place;

(b) the operator's name;

(c) a description of each gambling device or card game table for which a permit has been issued to the operator by the department for play upon the premises, including the type of game and permit number for each game; and

(d) any other relevant information determined necessary by the department.

(6) The operator's license must be issued annually along with all other permits for gambling devices or games issued to the operator.

(7) The operator's license must be updated each time a video gambling machine, bingo, keno, or card game table permit is newly issued or the machine or game is removed from the premises.

(8) The department shall charge an applicant who has submitted an operator's license application on or after July 1, 1991, a one-time license application processing fee to cover the actual cost incurred by the department in determining whether the applicant qualifies for licensure under 23-5-176. After making its determination, the department shall refund any overpayment or charge and collect amounts sufficient to reimburse the department for any underpayment of actual costs.

(9) The operator's license must be prominently displayed upon the premises for which it is issued."

NEW SECTION. **Section 11. Repealer.** Section 16-4-403, MCA, is repealed.

NEW SECTION. **Section 12. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 4, and the provisions of Title 16 apply to [section 1].

NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **VICE CHAIRMAN MIKE SPRAGUE**, on January 15, 2003 at 9:03 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddye McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 40, 12/9/2002
Executive Action: SB 40

Before the hearing on SB 40 began, **VICE CHAIRMAN SPRAGUE** discussed the committee's policy on absentee voting. **SEN. MAHLUM** moved that members of this committee be allowed to vote in absentia by proxy, using a standard form, while engaged in other legislative business. The motion was carried unanimously with a 9-0 vote.

{Tape: 1; Side: A}

HEARING ON SB 40

Sponsor: **SENATOR DALE MAHLUM, SD 35, MISSOULA**

Proponents: **Neil Peterson, Department of Revenue; Gene Huntington, Gambling Control; Mark Staples, Montana State Gambling Association**

Opponents: **None**

Opening Statement by Sponsor:

SEN. MAHLUM said in his opening statement that the groundwork had been laid for SB 40 on the first of day of this legislature during the joint meeting of the Senate Business and Labor Committee with the House Business and Labor Committee. It's a recommendation for the liquor task force that will provide for minor changes in the law and allows for improvement in the liquor/gaming application. This bill unravels some of the bureaucratic process and streamlines the application process to make it as efficient as possible for the applicant and the departments that look at it. It clarifies and significantly lowers our cost in performing our investigations and provides for a broader and more accurate source of information. In order to continue to use the FBI database, the federal government is requiring all states to amend their current laws. SB 40 meets these requirements.

Proponents' Testimony:

Neil Peterson, Department of Revenue, offered written testimony, **EXHIBIT(bus08a01)**.

Gene Huntington, Gambling Control Division, Department of Justice, appeared as a proponent of the bill. He offered testimony on the points in the bill that deal specifically with changes in his department's laws. It was started on a trial basis back in April; and, to date, the results from applicants, their employees and others have been positive. It has improved the efficiency of the process. There were a few things in existing statute that needed to be updated. Sections 9 and 10 deal with temporary authority, wherein the Department of Revenue can allow a new establishment to continue to operate while the licensing process is going forward. One of the prerequisites to get a gambling license is to have a liquor license. His department's practice has been to honor that temporary authority as a liquor license, so that as soon as they are done with their

gambling investigation, they can let the people also gamble. His department did not have clear authority to do that with the way the laws had been changed in recent years. Section 9 and 10 make it clear that this process is allowed. Section 8 deals with the restaurant beer and wine fee. When the restaurant, beer and wine licenses were authorized a few years ago and because his department does the financial review of the applicants, there was a provision put in to allow them to take 20 percent of the application to pay for what they do. With changes made in the last session, they can now get an appropriation out of that fund. Section 8 would have the fee go into the liquor enterprise fund and his department would have that amount appropriated out. He gave his support of the bill and urged the committee to the pass SB 40.

Mark Staples, Montana Tavern Association, stated he had been asked by his colleagues from the Coin Machine Operators Association and the Gaming Industry Association to speak for the three associations and to lend their support to the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. KITZENBERG asked **Mr. Peterson** to walk him through the process so he could get a sense of the time frame. **SEN. KITZENBERG** hypothetically went down to Virginia City to a garage sale to buy some boots. While he was down there, he saw a liquor license that was for sale. He bought the liquor license. He and his partner want to get it transferred to their name and start a casino. He wanted to know the time frame for doing so. **Mr. Peterson** answered that the application process for the gaming license is averaging around 80 days and the liquor portion is a few days longer. If everything in the combined application is completed, they can be approved in as little as 45 days. If they have to request information, it may take longer than the 90 days.

SEN. COCCHIARELLA shared that this is the eighth regular session she has come to and this is the first one she has come to without complaints from someone going through the process. She asked **Mr. Peterson** where people go to get fingerprinted. **Mr. Peterson** advised her that fingerprinting is available in all 56 counties at the sheriff or police stations or at a Department of Justice location. Some impose fees and some do not. She then asked him about the process for dropping a name from a license and was told it is a simple process.

SEN. GEBHARDT had further questions about the time line. He wanted to know if the Department of Revenue would wait the 80 or

so days to ask for further information and then make the applicant wait another 80 days. **Mr. Peterson** said the process is a constant review. Initially, when they get the application, the Department of Justice will contact the Department of Revenue and ask some questions. They inform the applicant as soon as possible if there is more information needed.

SEN. MAHLUM asked that **Mr. Peterson** explain what the term, "tolling" means. **Mr. Peterson** explained that tolling would be within that 90 days to get the application complete. After 45 days, if the applicant asks to stop it for whatever reason (maybe because they need to get more information) the department would stop the process at 45 days. Tolling would be that gap in time when the applicant is allowed to take care of whatever needs to be done. Then the time would start again when the applicant is ready.

Closing by Sponsor:

SEN. MAHLUM stated that this bill takes the complexity out of the application process for citizens of Montana involved in this type of business. He discussed fingerprinting and the need for it. He said SB 40 takes the frustration out of the process for citizens of Montana who want to become involved in the liquor or gaming industry. He expressed his belief that this is a good bill for the people of Montana.

EXECUTIVE ACTION ON SB 40

SEN. GEBHARDT moved **DO PASS** on **SB 40**. The vote was unanimous.

Montana Department of REVENUE
... meeting the challenge

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 1-15-03
BILL NO. SB 40

Senate Bill 40

Testimony for Senate Business & Labor Committee

Neil Peterson
Department of Revenue

January 15, 2003

Montana Department of REVENUE
... meeting the challenge

Why Senate Bill 40?

- Make's Permanent the Joint Application Process for a Liquor and Gaming License

- Further Aligns the Liquor License Application Process with the Gaming Application Process

- Increase efficiency in the Investigation Process between the Department of Revenue (DOR) and Department of Justice (DOJ)

- Allows DOR to Continue to Receive Information Regarding an Applicant's Past History

Make Permanent the Joint Application

- Section 2 of the bill expands the definition of the "department" to include DOJ for purposes of receiving and processing liquor applications.
- Section 3 of the bill specifically expands the powers of the DOR to contract with the DOJ to receive and process liquor applications
- Section 4 of the bill expands the prohibition of employees of the DOR to be directly or indirectly engaged in the alcohol beverage business to employees of the DOJ involved in the licensing process

Further Synchronize the Licensing Processes

- Section 5 of the bill eliminates the requirement that an application be returned to the applicant if the application is not complete within 30 days of receipt
- Section 6 expands the reasons for tolling the 90 days requirement to complete an investigation to include:
  - Requests by an applicant for a delay in the license determination
  - If the premise is being altered or newly constructed

Increase efficiency in the Investigation Process

- Section 7 of the bill allows the DOR to take an action against a licensee without an investigation by the DOJ when:
  - the DOR has an admission from the licensee
  - information from a local law enforcement agency

Montana Department of REVENUE
... meeting the challenge

Continue to Receive Information on Applicants

- Section 1 of the bill requires that applicants for a liquor license submit their fingerprints to facilitate a background check by the DOJ

MONTANA SENATE
2003 LEGISLATURE
BUSINESS & LABOR COMMITTEE
ATTENDANCE

DATE: January 15, 2003

NAME	PRESENT	EXCUSED	ABSENT
SENATOR DALE MAHLUM, CHAIR	✓		
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR SHERM ANDERSON	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR KELLY GEBHARDT	✓		
SENATOR BOB KEENAN		✓	
SENATOR SAM KITZENBERG	✓		
SENATOR KEN HANSEN	✓		
SENATOR GLENN ROUSH		✓	
SENATOR DON RYAN	✓		
SENATOR CAROLYN SQUIRES	✓		
SENATOR FRED THOMAS		✓	

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Business and Labor** recommend that **Senate Bill 40** (first reading copy -- white) **do pass.**

Signed: _____
Senator Dale Mahlum, Chair

- END -

Committee Vote:
Yes 10, No 0.

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MONTANA SENATE
2003 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE: 1-15-03 BILL NO. SB40 NUMBER

MOTION:
motion made by Sen. Gebhardt for a do pass recommendation.

NAME	AYE	NO
SENATOR DALE MAHLUM, CHAIR	✓	
SENATOR MIKE SPRAGUE, VICE CHAIR	✓	
SENATOR SHERM ANDERSON	✓	
SENATOR VICKI COCCHIARELLA	✓	
SENATOR KELLY GEBHARDT	✓	
SENATOR BOB KEENAN excused		
SENATOR SAM KITZENBERG	✓	
SENATOR KEN HANSEN	✓	
SENATOR GLENN ROUSH excused		
SENATOR DON RYAN	✓	
SENATOR CAROLYN SQUIRES	✓	
SENATOR FRED THOMAS excused		
9-0		

DATE January 15, 2003

SENATE COMMITTEE ON Business and Labor

BILLS BEING HEARD TODAY: SB 40

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Neil Peterson	444-1941	Dept of Revenue	40	X	
Ronda Carpenter	899-5059	Mt Coin Machine Operators	40	X	
Gene Huntington	444-9135	Gambling Control	40	X	
Robert Pavlovich	787507	Self	40	X	
Rick E Miller	449-2481	Gaming Industry Assoc	SB40	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 6, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 26 (2/27/03); SB 36 (2/27/03); SB 40 (2/27/03); SB 51 (2/27/03)
Executive Action: SB 51 (Be Concurred In); SB 40 (Be Concurred In)

Closing by Sponsor:

REP. LAWSON closed for SEN. BOHLINGER.
{Tape: 1; Side: B; Approx. Time Counter: 14 - 15}

HEARING ON SB 40

Sponsor: SEN. DALE MAHLUM, SD 35, Missoula

Opening Statement by Sponsor:

SEN. MAHLUN said that this bill provided for the coordination of the filing, processing, and granting of alcoholic beverage and gambling license applications. It also allows the Department of Revenue to contract with the Department of Justice for the receipt and processing of alcoholic beverage license applications and administering their investigative procedures. This bill would require alcoholic beverage and gambling license applicants to submit fingerprints for purposes of a background investigation, and provide additional grounds for tolling the time period within which an alcoholic beverage license application determination must be made.
{Tape: 1; Side: B; Approx. Time Counter: 15 - 58}

Proponents' Testimony:

Neil Peterson, Department of Revenue, provided written testimony.
EXHIBIT(buh47a02)
{Tape: 1; Side: B; Approx. Time Counter: 58 - 147}

Gene Huntington, Administrator, Gambling Control Division, explained the changes in the bill.
{Tape: 1; Side: B; Approx. Time Counter: 147 - 217}

Rich Miller, Executive Director, Gaming Industry Association, said this bill has been in the process since April. There has been a market change in the ability to transfer licenses.
{Tape: 1; Side: B; Approx. Time Counter: 217 - 235}

Chris Gallus, Attorney at Law, Montana Tavern Association, said they support the bill and the streamlining.
{Tape: 1; Side: B; Approx. Time Counter: 235 - 243}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. BOOKOUT-REINICKE asked Mr. Peterson about fingerprinting. **Mr. Peterson** said the process of getting fingerprints will be done through the application process. A specific card would be sent by the Department of Revenue that contains a code. The card would be processed through any law enforcement agency.
{Tape: 1; Side: B; Approx. Time Counter: 243 - 290}

REP. MENDENHALL questioned the consolidation between departments. **Mr. Peterson** affirmed this and he stated it would prevent duplication of processes.
{Tape: 1; Side: B; Approx. Time Counter: 290 - 339}

REP. MENDENHALL asked Mr. Huntington about the fingerprinting of new employees. **Mr. Huntington** stated it would take the same amount of time.
{Tape: 1; Side: B; Approx. Time Counter: 339 - 445}

Closing By Sponsor:

The sponsor closed.
{Tape: 1; Side: B; Approx. Time Counter: 445 - Tape: 2; Side: A; Approx. Time Counter: 13}

HEARING ON SB 36

Sponsor: REP. DUANE GRIMES, SD 20, Clancy

Opening Statement by Sponsor:

REP. GRIMES said this bill required a district court to require a water commissioner, upon appointment, to obtain workers' compensation insurance. It also clarified that the owners and users of distributed water, including permittees and certificate holders, are responsible for paying a proportionate share of workers' compensation insurance purchased by a water commissioner. It also specifies that a water commissioner appointed by a district court is a sole proprietor and is not an employee of the judicial branch of local government.
{Tape: 2; Side: A; Approx. Time Counter: 14 - 47}

Proponents' Testimony:

Beth McLaughlin, Supreme Court, said this bill will clarify an issue discovered during the State Assumption of District Courts last year. District Court judges appoint water commissioners

EXECUTIVE ACTION ON SB 51

Motion/Vote: REP. BOOKOUT-REINICKE moved that SB 51 BE CONCURRED IN. Motion carried 18-0. REP. LAWSON will carry the bill on the House Floor.

EXECUTIVE ACTION ON SB 40

Motion/Vote: REP. MORGAN moved that SB 40 BE CONCURRED IN. Motion carried 18-0. REP. BERGREN will carry the bill on the House Floor.

Montana Department of REVENUE
... meeting the challenge

EXHIBIT 2
DATE 3-6-03
SB 40

Senate Bill 40

Testimony for House Business & Labor Committee

Neil Peterson
Department of Revenue

March 6, 2003

Montana Department of REVENUE
... meeting the challenge

Why Senate Bill 40?

- Make's Permanent the Joint Application Process for a Liquor and Gaming License

- Further Aligns the Liquor License Application Process with the Gaming Application Process

- Increase efficiency in the Investigation Process between the Department of Revenue (DOR) and Department of Justice (DOJ)

- Allows DOR to Continue to Receive Information Regarding an Applicant's Past History

Make Permanent the Joint Application

- Section 2 of the bill expands the definition of the "department" to include DOJ for purposes of receiving and processing liquor applications.
- Section 3 of the bill specifically expands the powers of the DOR to contract with the DOJ to receive and process liquor applications
- Section 4 of the bill expands the prohibition of employees of the DOR to be directly or indirectly engaged in the alcohol beverage business to employees of the DOJ involved in the licensing process

Montana Department of REVENUE
... meeting the challenge

Further Synchronize the Licensing Processes

- Section 5 of the bill eliminates the requirement that an application be returned to the applicant if the application is not complete within 30 days of receipt
- Section 6 expands the reasons for tolling the 90 days requirement to complete an investigation to include:
  - Requests by an applicant for a delay in the license determination
  - If the premise is being altered or newly constructed

Montana Department of REVENUE
... meeting the challenge

Increase efficiency in the Investigation Process

- Section 7 of the bill allows the DOR to take an action against a licensee without an investigation by the DOJ when:
  - the DOR has an admission from the licensee
  - information from a local law enforcement agency

Montana Department of REVENUE
... meeting the challenge

Continue to Receive Information on Applicants

- Section 1 of the bill requires that applicants for a liquor license submit their fingerprints to facilitate a background check by the DOJ

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 3-6-03

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		✓
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 40** (third reading copy -- blue) **be concurred in.**

Signed: _____
Representative Joe McKenney, Chair

To be carried by Representative Bob Bergren

- END -

3-6-03

Committee Vote:
Yes 18, No 0.

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Montana House of Representatives
Visitors Register

BUSINESS & LABOR COMMITTEE Date 1-6-03

Bill No. ~~HB~~ SB40 Sponsor(s)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Neil Peterson	Dept. of Revenue	X		
Chris Gallus	Stapleton Law Firm MT Tavern Assoc	X		
Richie Miller	Gaming Ind Assoc	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

AN ACT PROVIDING FOR COORDINATION OF THE FILING, PROCESSING, AND GRANTING OF ALCOHOLIC BEVERAGE AND GAMBLING LICENSES APPLICATIONS; ALLOWING THE DEPARTMENT OF REVENUE TO CONTRACT WITH THE DEPARTMENT OF JUSTICE FOR THE RECEIPT AND PROCESSING OF ALCOHOLIC BEVERAGE LICENSE APPLICATIONS; REVISING ALCOHOLIC BEVERAGE INVESTIGATIVE PROCEDURES; REQUIRING ALCOHOLIC BEVERAGE AND GAMBLING LICENSE APPLICANTS TO SUBMIT FINGERPRINTS FOR PURPOSES OF A BACKGROUND INVESTIGATION; PROVIDING ADDITIONAL GROUNDS FOR TOLLING THE TIME PERIOD WITHIN WHICH AN ALCOHOLIC BEVERAGE LICENSE APPLICATION DETERMINATION MUST BE MADE; AMENDING SECTIONS 16-1-106, 16-1-302, 16-1-304, 16-4-207, 16-4-402, 16-4-406, 16-4-420, 23-5-119, AND 23-5-177, MCA; REPEALING SECTION 16-4-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Fingerprints required of applicants. An applicant for a license under this code, any person employed by the applicant as a manager, and, if the applicant is a corporation, each person holding 10% or more of the outstanding stock and each officer and director shall submit their fingerprints with the application to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation. The results of the investigation must be used by the department in determining the applicant's eligibility for a license.

Section 2. Section 16-1-106, MCA, is amended to read:

"**16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises

consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

(10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(11) "Immediate family" means a spouse, dependent children, or dependent parents.

(12) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(13) "Liquor" means an alcoholic beverage except beer and table wine.

(14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

(15) "Package" means a container or receptacle used for holding an alcoholic beverage.

(16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

(17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(18) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(21) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

(22) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(23) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(24) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

(25) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(26) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(27) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in

accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 3. Section 16-1-302, MCA, is amended to read:

"**16-1-302. Functions, powers, and duties of department.** The department has the following functions, duties, and powers:

(1) to buy, import, have in its possession for sale, and sell liquors;

(2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

(3) to determine the municipalities where agency liquor stores are to be established throughout the state and the situation of the stores within these municipalities;

(4) to lease, furnish, and equip any building or land required to administer its duties under this code;

(5) to buy or lease plants and equipment necessary to administer its duties under this code;

(6) to employ the necessary employees required to administer this code and to dismiss them, assign them their title, and define their respective duties and powers and to contract with the department of justice for investigative services and to receive and process, but not grant or deny, applications or to contract for the services of experts and persons engaged in the practice of a profession, if appropriate~~;~~. If the department contracts for the receipt and processing of an application by the department of justice, the application must state that it is to be filed with the department of justice.

(7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

(8) to grant and issue licenses under this code;

(9) to place special restrictions on the use of a particular license, which must be endorsed upon the face of the license, if the special restrictions are made pursuant to a hearing held in connection with the issuance of the license or if the special restrictions are agreed to by the licensee;

(10) without limiting or being limited by the foregoing, to do all things necessary to administer this code or rules."

Section 4. Section 16-1-304, MCA, is amended to read:

"**16-1-304. Prohibited acts.** (1) An employee of the department involved in the operation of the state liquor warehouse, the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with license applications or the investigation of matters concerning the manufacture, sale, and distribution of alcoholic beverages may not be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of a syndicate, shareholder, agent, or employee for the employee's own benefit or in a fiduciary capacity for some other person.

(2) An employee of the state, a state agent, or any person having any ownership interest in an agency liquor store may not solicit or receive, directly or indirectly, any commission, remuneration, gift, or other thing tangible or intangible of value from any person or corporation selling or offering liquor for sale to the state pursuant to this code.

(3) A person selling or offering for sale to or purchasing liquor from the state may not directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any employee of the state, any state agent, or any person having any ownership interest in an agency liquor store or to anyone on behalf of an employee.

(4) The prohibition contained in subsection (3) does not prohibit the state from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any liquor to the state of Montana shall submit, without cost to the state prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of the merchandise to the state.

(b) When a brand of liquor has been accepted for testing by the state, the state shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The state shall maintain written records of all samples received. The records must show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the state's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) Liquor may not be withdrawn from the regular warehouse inventory or from the agency liquor stores for any purpose other than sale to persons who hold liquor licenses at the posted price and sale to the consumer at the retail price established by the agent or for destroying damaged or defective merchandise. The state shall

maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse merchandise.

(6) The state may not require a company that manufactured, distilled, rectified, bottled, or processed and sold less than 200,000 proof gallons of liquor nationwide in the previous calendar year to maintain minimum amounts of liquor in the state warehouse while the distiller retains ownership of the product."

Section 5. Section 16-4-207, MCA, is amended to read:

"16-4-207. Notice of application -- investigation -- publication -- protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of a retail license, the department shall review the application for completeness and, based upon review of the application and any other information supplied to the department, determine whether the applicant or the premises to be licensed meets criteria provided by law. The department may make one request for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the application information requested by the department. ~~If the applicant does not provide the additional application information within 30 days of the department's request, the department shall terminate the application and return it to the applicant with an explanation of why the application was terminated. The terminated application is not a denial, and the premises identified in the application are not subject to the provisions of 16-4-413. An applicant whose application is terminated may subsequently submit a new application.~~ When the application is complete, the department ~~shall request that the department~~ of justice shall investigate the application as provided in 16-4-402. When the department determines that an application for a license under this code is complete, the department shall publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail on-premises license or a transfer of location and that protests may be made against the approval of the application by a person who has extended credit to the transferor or by residents of the county from which the application comes or adjoining Montana counties. Protests may be mailed to a named administrator in the department ~~of revenue~~ within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL

ALL-BEVERAGES LICENSE

Notice is given that on the .... day of ...., 20..., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of ..... counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to ...., department of revenue, Helena, Montana, on or before the .... day of ...., 20...

Dated .....

Signed

.....

ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) (a) If the administrator receives no written protests, the department may approve the application without holding a public hearing.

(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).

(c) If the department receives sufficient written protests that satisfy the requirements in subsection (1) against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(b) If the department receives the number of protests required for a public convenience and necessity

determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(c) The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages licenses determined for that quota area according to 16-4-201(1), (2), and (5) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption beer or all-beverages licenses."

Section 6. Section 16-4-402, MCA, is amended to read:

"16-4-402. Application -- investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department ~~shall request that the department~~ of justice shall make a thorough investigation of all matters relating to the application. Based on the results of the investigation or on other information, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

(c) For an original license application and an application for transfer of location of a license, the

department of justice's investigation and the department's determination under this subsection (2) must be completed within 90 days of the ~~request from the department to the department of justice~~ receipt of a completed application. If information is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. The time period is also tolled if the applicant requests and is granted a delay in the license determination or if the license is for premises that are to be altered, as provided in 16-3-311, or newly constructed. The basis for the tolling of the deadline must be documented.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(4) The department shall issue a conditional approval letter upon the last occurrence of either:

(a) completion of the investigation and determination provided for in subsection (2) if the department has not received information that would cause the department to deny the application; or

(b) a final agency decision that either denies or dismisses a protest against the approval of an application pursuant to 16-4-207.

(5) The conditional approval letter must state the reasons upon which the future denial of the application may be based. The reasons for denial of the application after the issuance of the conditional approval letter are as follows:

(a) there is false or erroneous information in the application;

(b) the premises are not approved by local building, health, or fire officials;

(c) there are physical changes to the premises that if known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or denial of the issuance of the conditional approval; or

(d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the department's final agency decision provided for in subsection (4)."

Section 7. Section 16-4-406, MCA, is amended to read:

"**16-4-406. Renewal -- suspension or revocation -- penalty.** (1) The department ~~may upon its own motion and~~ shall upon a written, verified complaint of a person request that the department of justice investigate

the action and operation of a brewer, winery, wholesaler, or retailer licensed under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after reviewing admissions of the licensee or receiving the results of the department of justice's or a local law enforcement agency's investigation, has reasonable cause to believe that a licensee has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

(a) reprimand a licensee;

(b) proceed to revoke the license of the licensee;

(c) suspend the license for a period of not more than 3 months;

(d) refuse to grant a renewal of the license after its expiration; or

(e) impose a civil penalty not to exceed $1,500.

~~(3) If the department, after receiving the results of the department of justice's investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act.~~"

Section 8. Section 16-4-420, MCA, is amended to read:

"**16-4-420. Restaurant beer and wine license.** (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) in the case of an individual applicant:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board

of directors must meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange must meet the requirements of subsection (1)(b)(ii);

(d) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic

beverage may not be considered for a restaurant beer and wine license at the same location.

(b) A restaurant that sells its existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(3) ~~(a)~~ A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall ~~request that the department of justice make an investigation of all~~ investigate the items relating to the application as described in subsections (3)(a)~~(i)~~ through (3)~~(a)(iv)~~(d). Based on the results of the investigation ~~or in exercising~~ and the exercise of its sound discretion, the department shall determine whether:

~~(i)~~(a) the applicant is qualified to receive a license;

~~(ii)~~(b) the applicant's premises are suitable for the carrying on of the business;

~~(iii)~~(c) the requirements of this code and the rules promulgated by the department are ~~met and~~ complied with; and

~~(iv)~~(d) the seating capacity ~~as~~ stated on the application is correct.

~~(b) The department may retain 20% of the application fee collected under subsection (11) to defray the costs of the department and department of justice associated with investigating and processing applications.~~

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space

is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner meal.

(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 50% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(iv) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine

licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license for that quota area.

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants from previous selections must also be given a preference. An applicant with both preferences must be awarded a license before any applicant with only one preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license

within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies ~~issuing a license to an applicant~~ an application, the application fee, plus any interest, less a ~~$100~~ processing fee established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or less;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is $400.

(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license."

Section 9. Section 23-5-119, MCA, is amended to read:

"23-5-119. Appropriate alcoholic beverage license for certain gambling activities. (1) Except as provided in subsection (3), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant shall own in the applicant's name:

(a) a retail all-beverages license issued under 16-4-201;

(b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises;

(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in

16-4-105(1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6;

(d) a retail beer and wine license issued under 16-4-109;

(e) a retail all-beverages license issued under 16-4-202; or

(f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

(4) A license transferee or a qualified purchaser operating pending final approval under 16-4-404(6) who has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title 23, chapter 5, part 3, 5, or 6."

Section 10. Section 23-5-177, MCA, is amended to read:

"**23-5-177. Operator of gambling establishment -- license -- fee.** (1) It is a misdemeanor for a person who is not licensed by the department as an operator to make available to the public for play a gambling device or gambling enterprise for which a permit must be obtained from the department.

(2) To obtain an operator's license, a person shall submit to the department:

(a) a completed operator's license application on a form prescribed and furnished by the department;

(b) the person's fingerprints and, if the applicant is a corporation, the fingerprints of each person holding 10% or more of the outstanding stock of the corporation and of each officer and director of the corporation, to be used for a fingerprint and background check that must be used by the department in determining eligibility for a license;

~~(b)~~(c) any other relevant information requested by the department; and

~~(c)~~(d) a license application processing fee, as required in subsection (8).

(3) Before issuing an operator's license, the department shall approve, in accordance with 23-5-117, the premises in which the gambling activity is to be conducted.

(4) Except as provided in 23-5-117, regardless of the number of on-premises alcoholic beverage licenses issued for a premises, the department may issue only one operator's license for the premises.

(5) An operator's license must include the following information:

(a) a description of the premises upon which the gambling will take place;

(b) the operator's name;

(c) a description of each gambling device or card game table for which a permit has been issued to the operator by the department for play upon the premises, including the type of game and permit number for each game; and

(d) any other relevant information determined necessary by the department.

(6) The operator's license must be issued annually along with all other permits for gambling devices or games issued to the operator.

(7) The operator's license must be updated each time a video gambling machine, bingo, keno, or card game table permit is newly issued or the machine or game is removed from the premises.

(8) The department shall charge an applicant who has submitted an operator's license application on or after July 1, 1991, a one-time license application processing fee to cover the actual cost incurred by the department in determining whether the applicant qualifies for licensure under 23-5-176. After making its determination, the department shall refund any overpayment or charge and collect amounts sufficient to reimburse the department for any underpayment of actual costs.

(9) The operator's license must be prominently displayed upon the premises for which it is issued."

Section 11. Repealer. Section 16-4-403, MCA, is repealed.

Section 12. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 4, and the provisions of Title 16 apply to [section 1].

Section 13. Effective date. [This act] is effective on passage and approval.

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